

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF WINCHESTER)	
MUNICIPAL UTILITIES FOR APPROVAL OF)	CASE NO.
THE COLLECTION OF SYSTEM)	96-616
DEVELOPMENT CHARGES)	

O R D E R

Kentucky Rural Water Association ("KRWA") and Boonesboro Water Association ("BWA") have moved for dismissal of this proceeding. As grounds for their motion, they assert that Winchester Municipal Utilities ("WMU") lacks the necessary authorization from the Winchester City Commission to assess the proposed system development charges ("SDCs") against its wholesale customers. Having considered the motions and the response thereto, the Commission grants the motions to dismiss.

WMU, an appointed commission created by local ordinance, operates a water treatment and distribution system and a wastewater collection and treatment system which serve 9,275 retail water customers and 8,803 retail sewer customers in Winchester, Kentucky and the unincorporated areas of Clark County. It also provides wholesale water service to BWA and East Clark County Water District ("East Clark District").

Concerned that its existing utility plant was reaching its capacity limits and that additional capacity expansions would be required to provide adequate service, the WMU Commission in July 1995 began considering the assessment of SDCs to finance such

expansions. On February 1, 1996, after several months of studying SDCs, the WMU Commission approved the assessment of SDCs of \$1,000 for a 5/8-inch meter. The WMU Commission subsequently submitted its proposal for a water and wastewater SDC to the Winchester City Commission. On July 16, 1996, the Winchester City Commission created by ordinance a new section in the Winchester Code of Ordinances.¹

This new section provided:

The developer or owner of each establishment to be served by Winchester Municipal Utilities which involves a zone change or subdivision resulting in additional water and/or wastewater system demand, or which involves an extension of said water or wastewater system, shall pay to Winchester Municipal Utilities as a system development charge, in addition to any other charges now or hereafter in effect, the following amounts:

For each establishment served by a 5/8" meter:

Water System Development Charge	\$1,000.00
Wastewater System Development Charge	\$1,000.00

For each establishment served by a meter greater than 5/8" in size, the water system development charge and the wastewater system development charge will be determined by the ratio of the maximum flow of the required meter to the maximum flow of a 5/8" meter (equivalent meter factor) as follows:

<u>Size of Meter</u>	<u>Equivalent Meter Factor</u>
5/8"	1.0
1"	2.5
1-1/2"	5.0
2"	8.0
3"	16.0
4"	25.0
6"	50.0
8"	80.0
10"	115.0

¹ Winchester, Ky., Ordinance No. 21-96 (July 16, 1996).

For each establishment served by a meter greater than 5/8" in size, water and wastewater system development charges will be calculated as the product of the equivalent meter factor and the system development charge for a 5/8" meter.

Winchester, Ky., Code of Ordinances §14-90 (1997).

On December 5, 1996, WMU filed with this Commission a rate schedule which contained its proposed SDCs. After receiving objections to the proposed charge and requests for a Commission review from BWA and East Clark District,² the Commission suspended the proposed charge and initiated an investigation. The Kentucky League of Cities and the KRWA intervened. After extensive discovery, the Commission held a public hearing in this case on August 11-12, 1997. With submission of written briefs, this case stood submitted for decision on September 24, 1997.

At the time of submission, KRWA and BWA moved for dismissal of this proceeding and rejection of the proposed charges. They argue that WMU's application is premature since it lacks legal authority to collect any SDC from its wholesale customers. They assert that WMU may not assess any rate without the approval of the Winchester City Commission, that the ordinance which WMU relies upon for the assessment of SDCs makes no reference to wholesale customers and that, in its current form, the ordinance does not authorize the proposed SDCs.

² East Clark District subsequently withdrew as a party to this proceeding.

In its response, WMU asserts the "Ordinance plainly states that SDCs will be assessed to those served by Winchester Municipal Utilities." WMU Reply Brief at 4. WMU's wholesale customers, it argues, are served by WMU. WMU further argues that the Winchester City Commission's acquiescence to WMU's application clearly demonstrates that Commission's support and authorization for the proposed charges. If the explicit approval of the Winchester City Commission is required, WMU argues that this Commission can make such approval a condition of its approval of the proposed rate.

Before any WMU charge may be assessed, the Winchester City Commission must approve it. KRS 96.170 provides:

The legislative body of any city of the third class may, by ordinance, provide the city and its inhabitants with water, light, power, heat and telephone service, by contract or by works of its own, located either within or beyond the boundaries of the city; make regulations for the management thereof, and fix and regulate the prices to private consumers and customers.

See also 64 Am. Jur. 2d Public Utilities §§81, 89 (1972).

While the Winchester City Commission has authorized the assessment of a water and wastewater SDC, it has not authorized the SDC which WMU proposes.³ Ordinance No. 21-96 authorizes the assessment of an SDC on "developers or owners of each establishment to be served by Winchester Municipal Utilities." Neither of WMU's

³ See Appendix A for the text of the proposed rate schedule with the unauthorized provisions highlighted.

wholesale customers fall within this classification. They are not developers nor are they prospective customers seeking water or wastewater service from WMU.

Ordinance No. 21-96 makes no reference to wholesale customers or to developers or prospective customers who are served by WMU's wholesale customers. The Ordinance's clear and unambiguous language indicates that payments from "developers" and "owners of establishments" were to be made directly to WMU, not through a middle man. It does not provide that SDCs are to be applied to WMU's wholesale customers in lieu of direct payments or impose upon those customers the role of WMU's bill collector.

This Commission rejects the proposition that persons connecting to and receiving water service from the distribution systems owned by WMU's wholesale customers are "served by" WMU. These persons are customers of BWA or East Clark District. No legal relationship between WMU and these persons exists. To construe their relationship in any other manner would obliterate the legal distinction between WMU and its wholesale customers' water systems. WMU serves only BWA and East Clark District, not their customers.

While WMU argues that the Winchester City Commission intended the SDC charges to be applied to its wholesale customers, the Ordinance's preamble suggests that the City Commission's focus was upon WMU's retail customers only. It states that, since August 17, 1995, WMU has approved developments only upon the developer's agreement to pay an SDC. WMU's approval of developments extends only to its retail customers. It has never reviewed or approved developments constructed in BWA or

East Clark District's service territories. It, moreover, has no review authority over such developments.

The City Commission's alleged acquiescence to WMU's attempts to impose the SDC on its wholesale customers is not sufficient to meet the requirements of KRS 96.170. Authority to impose the proposed charge must be granted by ordinance. No such ordinance currently exists. The Commission notes that KRWA and BWA's motions were initially raised two months ago. The Winchester City Commission had adequate time to adopt an ordinance which clarified its position and rendered the motions moot. Its failure to take such action weakens WMU's claim of acting with the City Commission's approval.

The Commission finds that any application for the adjustment of existing rates or the establishment of new rates which lacks the requisite authorization from its governing body is premature and must be dismissed. To hold otherwise would needlessly inject this Commission into local disputes. Only when a utility's governing body has expressly authorized the rates for which Commission approval is sought will this Commission review the merits of the proposed rates. As such authorization is lacking in this case, WMU's application should be dismissed.⁴

⁴ Assuming arguendo that the Winchester City Commission has authorized the proposed wastewater SDC, this Commission would still be compelled to dismiss WMU's application. Our jurisdiction over the rates of a municipal utility extends only to the rates charged to public utilities. Wastewater collection systems are not public utilities. Boone County Water and Sewer District v. Pub. Serv. Comm'n, Ky., 949 S.W.2d 588 (1997). The only customers of WMU's wholesale wastewater service would be entities operating wastewater collection systems.


While we are today dismissing WMU's application, the Commission finds that the concept of SDCs merits further attention. For this reason, we will initiate in the near future an administrative proceeding to study the issue of SDCs and to solicit comments from all water utilities, both public and municipal, on SDCs.

IT IS THEREFORE ORDERED that:

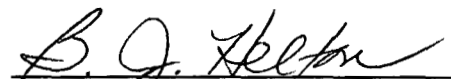
1. The motions of BWA and KRWA to dismiss WMU's application is granted.
2. WMU's application for approval of water and wastewater SDCs to BWA and East Clark District is dismissed.

Done at Frankfort, Kentucky, this 3rd day of October, 1997.

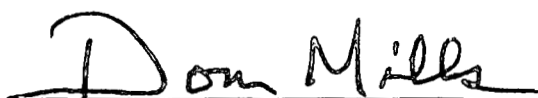
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX A

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 96-616 DATED 10/3/97

The proposed charge is set forth below with the unauthorized provisions highlighted:

System Development Charges:

The developer or owner of each establishment to be served by Winchester Municipal Utilities **(or its wholesale customers)** which involves a zone change or subdivision resulting in additional water and/or wastewater system demand, or which involves an extension of said water or wastewater system, shall pay to Winchester Municipal Utilities as a system development charge, in addition to any other charges now or hereafter in effect, the following amounts:

For each establishment served by a 5/8" meter:

Water System Development Charge	\$1,000.00
Wastewater System Development Charge	\$1,000.00

For each establishment served by a meter greater than 5/8" in size, the water system development charge and the wastewater system development charge will be determined by the ratio of the maximum flow of the required meter to the maximum flow of a 5/8" meter (equivalent meter factor) as follows:

<u>Size of Meter</u>	<u>Equivalent Meter Factor</u>
5/8"	1.0
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4"	25.0
6"	50.0
8"	80.0
10"	115.0

For each establishment served by a meter greater than 5/8" in size, water and wastewater system development charges will be calculated as the product of the equivalent meter factor and the system development charge for a 5/8" meter.

System development charges are to be paid in full at the time facilities are dedicated for ownership to and perpetual maintenance by Winchester Municipal Utilities or one of its wholesale customer systems.

System development charges were recommended by the Winchester Municipal Utilities Commission and ordained by the Board of Commissioners of the city of Winchester on July 16, 1996 with said charges to be collected from developers and customers who meet the criteria on all system extensions since August 17, 1995. The Board of Commissioners of the city of Winchester further ordained on August 6, 1996 that system development charges be paid in full at the time facilities are dedicated for ownership to and perpetual maintenance by Winchester Municipal Utilities.

The Winchester Municipal Utilities will apply, charge, collect, and administer system development charges on wholesale customers in the same manner in which charges are applied, charged, collected, and administered to Winchester Municipal Utilities developers and customers.